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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,492	06/25/2003	Kazuhisa Obuchi	FUJO 20.466	1683
26304	7590	05/02/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP			CHUNG, PHUNG M	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	
			2138	
DATE MAILED: 05/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/609,492	Applicant(s) OBUCHI ET AL.	
	Examiner Phung My Chung	Art Unit 2138	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006 and 20 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-10, 12-15 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 12-15 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election Without Traverse:

1. Applicant's election without traverse of Group I, Claims 1-3, 5-7, 8-10, 12-14, 15 and 18 on 2/9/06 is acknowledged.

Single Means Claims:

2. Claims 15 and 18 are single means claims, for example, where a means (a control unit) recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. In re Hyatt, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the scope of the claim because the specification disclosed at most only those means known to the inventor). When claims depend on a recited property, a fact situation comparable to Hyatt is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor. (See MPEP 2164.08).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3, 5-10, 12-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant admitted prior art (AAPA) in view of Chen (6,330,462).

As per claim 1, the AAPA discloses a error rate control apparatus, comprising:

a control signal error rate computation unit computing an error rate of the control signal;
and A power variable unit transmitting the control signal after increasing the transmission power based on a value of the error rate (paragraph (0026)). The AAPA does not disclose that changing transmission power of the control signal based on a value of the error rate. However, Chen discloses changing transmission power of the control signal based on a value of the error rate (col. 9, line 63 to col. 10, line 54). Therefore, it would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to incorporate the changing transmission power of the control signal based on a value of the error rate as taught by Chen into the changing power unit of the AAPA to change the transmission power of the control signal based on the error rate so that less power is wasted by sending the data with excess power

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without estimating channel conditions, and data loss by transmitting the data with insufficient power is minimize. (See Chen col. 14, lines24-28).

As per claims 2-3 and 5-7, the AAPA further discloses wherein the communication system is a W-CDMA system (paragraph (0006), and wherein the control signal is a TFCI, a PILOT, or a TPC in a signal format of a W-CDMA system (paragraph (0024)-(0025)).

As per claim 8, this claim is rejected under similar rationale as set forth in claim 1.

As per claims 9-10 and 12-14, these claims are rejected under similar rationale as set forth in claims 2-3 and 5-7.

As per claims 15 and 18, these claims are rejected under similar rationale as set forth in claims 1 and 8.

5. Applicant's arguments with respect to claims 1-3, 5-10, 12-15 and 18 have been considered but are moot in view of the new ground(s) of rejection.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung My Chung whose telephone number is 571-272-3818. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on 571- 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phung My Chung
Primary Patent Examiner